

**DEC 23 2005**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**OTIS R. GLENN,**

Plaintiff - Appellant,

v.

**M. BERNDT; M. KELLY; M. D. YAX;  
R. KIRKLAND; J. MORRISON; R.  
DROWN; E. YOUNG; A. SOMERA; R.  
SHELLABARGER; J. ZUCCO; A.  
PAUL; S. PRESTON; T. RYAN; C.  
ARISPE,**

Defendants - Appellees.

No. 03-17213

D.C. No. CV-02-04674-CRB

**MEMORANDUM**\*

Appeal from the United States District Court  
for the Northern District of California  
Charles R. Breyer, District Judge, Presiding

Argued and Submitted December 9, 2005  
San Francisco, California

Before: **KOZINSKI** and **W. FLETCHER**, Circuit Judges, and  
**HOLLAND**<sup>\*\*</sup>, District Judge.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The Honorable H. Russel Holland, Senior United States District Judge for the District of Alaska, sitting by designation.

Glenn has presented no evidence that any prison official was deliberately indifferent to his safety. See Farmer v. Brennan, 511 U.S. 825, 834–36 (1994) (prison officials do not violate the Eighth Amendment unless they act recklessly or knowingly; they cannot be held liable for mere negligence); see also Estelle v. Gamble, 429 U.S. 97, 105–06 (1976). Officer Kelly testified that he opened the two cell doors, releasing several prisoners, by accident, and Glenn has presented nothing to cast doubt on Kelly’s motive. Without evidentiary support, Glenn’s speculation that Kelly’s or the other officials’ actions must have been purposeful is insufficient to defeat summary judgment. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

**AFFIRMED.**